

**MEETING SUMMARY REPORT
O'Neill Federal Building Auditorium
10 Causeway Street, Boston, MA 02222**

July 14, 2006

Regulatory Enforcement Fairness Hearing

Total attendance:	28
RegFair Board in attendance	03
SBA personnel	05
Agencies attending	06 (IRS, EPA, DOL, USDA, USAF, NOAA)
No. of comments	11

Summary:

Testifiers:

1. Robert Cottingham, Vice President Government Affairs, Phacil Corp.

SBA /Department of Homeland Security - This SBA 8(a)/HUBZone firm complains that federal agencies are not following the law with regard to small business contracting goals. For example, the Missile Defense Agency, which spends \$9 billion annually in procurement, has only spent \$18 million with small disadvantaged businesses in the past five years. Mr. Cottingham requests that SBA consider the statistic that only 2% of all small disadvantaged businesses report more than \$1 million in revenue and urges that SBA oversight and enforcement be strengthened. He further complains that federal agencies misclassify large firms as small businesses thus making it difficult for small firms to compete. Phacil is enrolled in a mentor/protégé program at the Department of Homeland Security. The mentor company has won \$300 million in new business from DHS while Phacil has not been used to work on any of these contracts. Phacil believes it is SBA's responsibility to ensure that small disadvantaged firms have a fair opportunity to subcontract to large companies who have had their subcontracting goals and results scrutinized and are kept accountable for meeting these goals. Requested no intervention at this time but wanted to notify the Ombudsman about the issues facing small businesses as they attempt to work with the Department of Homeland Security.

2. David Lister, Human Resources Director, Gentle Giant Moving Company, Inc

DOL/CIS: The seasonal nature of this business requires hiring seasonal workers and finding seasonal workers is an ongoing problem. One solution is hiring international workers using the H2B seasonal worker visa. The use of this visa has positively impacted the company over the past three years; however, the problem lies in the process necessary to obtain approval to offer this visa to international workers. The process is long, tedious and complicated enough that the company retains the services of a non-profit organization as consultants to guide them through. The process involves labor certification at the state level, labor certification at the U.S. Department of Labor and then final approval by the U.S. Citizenship and Immigration Service. The application for the visa cannot be filed until 120 days prior to the date specified as the starting date of the requested visa. In two of the last three years, the company did not receive notice of approval until well after the start date requested for the visa, which delayed arrival of workers. In 2005 the lengthy and slow process cost the company to lose out on the visa altogether. Emergency legislation enabled them to get their seasonal workers four months late. This legislation covered the 2006 season also. A simplified approach would benefit Gentle Giant and other companies throughout the U.S. that rely on seasonal workers for financial success.

3. James M. Knott, Jr., President, Chairman of the Board, Riverdale Mills Corporation

OSHA: Mr. Knott reports several unpleasant experiences with OSHA inspectors. The first inspector reported about 15 non-compliance issues all of which were eventually proved untrue after Mr. Knott filed an appeal, met with OSHA officials and was able to present his argument. Another inspector insisted on a wall-to-wall inspection despite the fact that the company voluntarily participates in a program with the state that eliminates the need for an OSHA inspection for one year. Other problems, fines and lawsuits have been an ongoing problem. On May 23, 2006, Mr. Knott testified on behalf of the National Association of Manufacturers before the House Subcommittee on Courts, the Internet and Intellectual Property in support of H.R. 435, the Equal Access to Justice Reform Act of 2005. He testified that small companies need the protections offered by the EAJA when challenged by the government.

4. Angela SanFilippo, President, The Gloucester Fishermen's Wives Association

USDOC/NMFS: Mrs. SanFilippo testified that fishing regulations, beginning with the Magnuson-Stevens Act expanding commercial fishing in 1977, has negatively impacted the commercial fishing industry and the other businesses reliant upon it. At that time, the DOC encouraged the expansion of the U.S. commercial fishing industry by offering low interest loans to anyone who had enough collateral to buy bigger and better equipped fishing vessels. This move led to many new vessels not owned by those who historically fished off the New England coast. By the early 1990s, many of the newer vessels were no longer operating and the established fishermen informed the NMFS that additional fishing regulations were needed to prevent the depletion of different stocks of fish. It took the New England Fisheries Management Council four years and a lawsuit to promulgate new regulations which turned out to be much harsher than they would have been if enacted four years earlier. Amendment 5 limited the number of fishing days and the number of pounds allowed and closed large area fishing grounds. These regulations forced many commercial fishermen out of business. DOL funded state programs to assist fishermen train for new careers. Other amendments reduced the number of allowable fishing days, crew size, increased mesh size and imposed other regulations. By May 2004, 5,000 jobs had been lost in Massachusetts alone. The present regulations under Amendment 13 have reduced the number of fishing days per year to 42, decreases the amount of codfish that can be landed, increases the size of the code fish and lowered the trip limit to other species. Plus in September, all groundfish vessels must install mandatory vessel tracking systems so that they can be monitored while at sea. DOL has ended its funding to assist fishing families and there is no money for a federal buyback program.

5. Lawrence S. Nannis, Levine, Katz, Nannis & Solomon & Smaller Business Association of New England Board Member & Board Member of the National Small Business Association

IRS: Mr. Nannis commended the IRS on being more customer friendly. However, the many regulations and internal decisions of the IRS have added to the compliance costs of his small business clients. In some cases, new laws have been passed that would benefit clients but the regulations promulgated have been so confusing that clients have opted not to take advantage because the cost to determine how to get the benefit was higher than the tax savings. In other cases, new rules have clients paying taxes on income they have not yet received. This year the IRS estimated that the tax gap was \$290 billion and determined that small business was the major contributor to this gap. Last July, the IRS announced a plan to conduct an audit study of 5,000 S corporations and their shareholders. Nannis and his colleagues believe that everyone should pay their fair share but their concern is that where auditors determine there are insignificant errors, they aggressively pursue the small business taxpayer because they know that most small businesses cannot afford to battle with IRS. Section 199 of the code allows additional deductions for producers that manufacture domestic products; however the table of contents is 9 pages and the regulations comprise 135 pages. In some cases, the cost of maximize the deduction has not justified the deduction. He also discussed the impact of a new section of the code which covers guidelines for the taxation of deferred compensation. The cost of compliance is 67% higher than in large firms. Mr. Nannis urged IRS to weigh the cost to the small business.

6. William A. Picard, President, Advanced Environmental Solutions, Inc.

SBA: Mr. Picard sought to have a major contract at Tinker AFB, Oklahoma set aside as a SDVOSB set aside. It was determined that sufficient competition existed among SDVOSBs to provide the services to the government. In an effort to win the contract, Picard recruited the entire staff of seven Oklahomans who had been working on the contract for a combined 97 years with 16 consecutive years of zero reported work-related injuries or illnesses. Equipment had been purchased and a long-term lease secured and competitive rates had been determined. In March 2005 AES learned that the USAF had awarded the contract to Eason Enterprises, a firm incorporated in February 2005. AES appealed the decision to SBA. In May 2005 SBA concluded that Eason's service-disabled veteran did not own or control the protested concern. Eason appealed the decision and SBA once again denied the appeal. Picard's issue is that SBA did not take any punitive or remedial action to assure that Eason would cease its representation as a SCDVO SBC. Picard lost \$900,000 in revenues and \$35,000 in legal costs and urges SBA to prevent firms that misrepresent themselves from competing with valid SDVO concerns.

7. James M. Knott, Jr., President, Riverdale Mills Corporation

EPA: Mr. Knott has owned a manufacturing business in central Massachusetts since 1980. Riverdale Mills employs 100 people and occupies 372,000 square feet of space and exports about 25% of its product. In 1997, Knott's company was besieged by 22 EPA police officers on a search and seizure mission. A reading of the warrant showed that EPA had been authorized to search the premises and seize documents related to the operation of Riverdale Mills Corporation Wastewater Treatment Plant. After seven hours of searching, EPA left with a stack of documents only 5% of which had anything to do with the wastewater treatment plant. Nine months later an indictment, a \$1.5 million fine and six years of jail time were issued because of the claim that acidic wastewater had been discharged to a publicly-owned sewer. Knott's own investigation revealed that EPA found all discharges to be neutral just 17 days prior to the EPA search. Further investigation revealed that an EPA inspector had altered the numbers on the report, which the inspector admitted in front of a judge. The judge ruled that falsified evidence could not be used by EPA in their case and without evidence that the Rivers Protection Act had been violated, the U.S. Justice Department asked the judge to dismiss the case. The out-of-pocket cost to Knott was \$218,000. Knott urged the passage of the Equal Access to Justice Reform Act to enable small business owners to be compensated for the costs of protecting themselves and their businesses from the government.

8. Angela SanFilippo, President, the Gloucester Fishermen's Wives Association

USCG/FERC: Two large corporations want to establish a LNG unloading facility in the ocean eight miles from the coast of Gloucester in Block 125 adjacent to Stellwagen Bank National Marine Sanctuary. Block 125 is one of the most productive fishing grounds in the Gulf of Maine and is an essential fish habitat where fishing fleets from small fishing communities have fished for the last 400 years. Block 125 is so valuable to the replenishment of the Gulf of Maine cod stock that the block is closed to commercial groundfish vessels for four months every year during the spawning season. It is also part of the feeding grounds for the endangered North Atlantic Right Whale. Members of the commercial fishing industry have read the environmental impact statements and responded to the appropriate agencies. Mrs. SanFilippo states that if the project is licensed that the commercial fishing industry and recreational fishing industry will lose fishing grounds or there will be an exclusion zone so that fishing vessels with bottom gear cannot fish within miles of these operations.

9. Jack Devlin, Devlin Search Group

SBA: In written testimony, Mr. Devlin states that agencies and large prime contractors have not reached their 3% mandatory goals as established by the Veterans Entrepreneurship and Small Business Act of 1999, PL 106-50, and that contracting officers would like greater discretion in selecting Small Disadvantaged Veteran Owned Businesses to meet their goals. This legislation created the framework for federal contracting assistance for veteran business owners. The law directed that SBA and others do more to assist veterans with starting and expanding their own small businesses. Congress also called for the creation of SBA's Veterans Advisory Board. Devlin claims that while the Veterans Administration and its Center for Veterans Enterprise have been progressing, the SBA seems to be declining in its support with very few resources directed toward assisting veterans. When veteran business owners began to pursue federal contracts they were often told that PL 105-50 is just a goal. There are no teeth in it. The Task Force for Veterans Entrepreneurship began to call for additional legislation to correct apparent shortcomings. Public Law 108-183 was passed in 2003 creating a mandatory 3% goal, yet this goal is still not being met. Mr. Devlin went on to suggest changes that would be helpful.

10. Steven P. Affanato, Legislative Director, North/East Roofing Contractors Association, Inc.

OSHA: This association is made up over 500 roofing contractors throughout the northeast. The association has been actively involved in debate and discussion regarding regulatory enforcement issues for more than 80 years. NERCA members support the "compliance assistance" approach by regulatory agencies such as OSHA. NERCA has been involved in the training with OSHA over the past five years so that roofing contractors better understand regulations that are in place regarding the roofing industry. NERCA supports this continued approach rather than the "enforcement first" approach that has been so prevalent.

11. Leo R. Blais, written testimony on behalf of the Professional Compounding Centers of America

FDA: Mr. Blais writes that the FDA visited a facility and quarantined four chemicals that are used to compound prescription drugs for humans and companion animals not because anything was wrong with them, but because they feel that any pharmacy that compounds a valid prescription with any of those chemicals is creating a new drug, and therefore comes under the jurisdiction of the FDA. The FDA is attempting to halt the practice of pharmacy compounding by halting the supply of the very chemicals needed by pharmacies nationwide. This rationale has been directly refuted by a recent court decision in the 5th Circuit and flies in the face of the historic ability of pharmacists to be able to practice their profession. Mr. Blais requests that the practice be stopped immediately.

Organization	Contact	Membership
Alliance for Amesbury	Raymond Shockey	200
Associated Industries of Massachusetts	Rick Lord	25,000
Attleboro Chamber of Commerce	Roy Nascimientto	150
Cambridge Chamber of Commerce	Lisa Schoenburg	1,400
Cape Ann Chamber of Commerce	Michael Costello	800
Cape Cod Chamber of Commerce	Wendy Norcross	1,400
Fall River Chamber of Commerce	P. Kortright/L. Pina	600
The Gloucester Fishermen's Wives Association	Angela San Filippo	250
Greater Lowell Chamber of Commerce	Jeanne Osborn	850
Greater Manchester Chamber (NH)	Robin Comstock	1,000
Greater Merrimack Valley Convention & Visitors Bureau	D. Belanger	600
Greater Newburyport Chamber of Commerce	Michelle Landers	850
Greater Haverhill Chamber of Commerce	Sally Cerasuolo-O'Rorke	450
Hidden Tech	Amy Zuckerman	800
Homebased Business Women's Network	Elaine Abramo	100
Homebuilders Association of MA	Linda Donato	1,600
Mass Bankers Association	Kevin Kiley	150
Mass Biotech Council	Eustacia Reiddy	440
Mass High Tech Council	Chris Anderson	150
Massachusetts Oil Heat Council		350
Mass Technology Leadership Council	Lois Johnson	600
Massachusetts Lodging Association	Art Canter	400
Massachusetts Medical Device Industry	Thomas Sommer	350
Massachusetts Society of Certified Public Accountants Inc.	Hayley Dunn	750
Merrimack Valley Chamber of Commerce	Joe Bevilacqua	1,500
Merrimack Valley Economic Development Council	Robert Ansin	80
Metrosouth Chamber of Commerce	Sarah DeBennencourt	1,000
North/East Roofing Contractors Association, Inc.	Stephen P. Affanato	500
National Federation of Independent Businesses	Bill Vernon	2,000
Retailers Association of Massachusetts	Jon B. Hurst	3,000
Smaller Business Association of New England	Bob Baker	1,000
Worcester Area Chamber of Commerce	Sharyn Williams	2,500
	Total:	50,820

